# Consulting with Tribal Natural and Cultural Resource Offices Throughout the Life of a Transportation Project

#### Whose Who and What Do They Do:

### FHWA ~ Sharon Love, FHWA Environmental Program Manager (360) 753-9558 sharon.love@fhwa.dot.gov

Provides support to policy guidance for Area Engineers; coordinate statewide policy and process improvements.

#### **FHWA Area Engineers**

• The primary contact for projects. You can identify the appropriate Area Engineer at www.fhwa.dot.gov/wadiv.

### WSDOT Tribal Liaison ~ Colleen Jollie (360) 705-7025 jolliec@wsdot.wa.gov; www.wsdot.wa.gov/tribal

 Promote full effective communication between the tribes and WSDOT.

### WSDOT Environmental Services Tribal Liaison ~ Megan Beeby (360) 705-7494 beebym@wsdot.wa.gov

Tribal intergovernmental relations focused on natural and cultural resources, policy development

### WSDOT Cultural Resources Manager ~ Sandie Turner (360)570-6637 turners@wsdot.wa.gov

 Office reviews projects to ensure they are in compliance with NHPA Sec. 106.

#### **Regional Tribal Coordinators**

 Each WSDOT region has a tribal coordinator who, in addition to their regular duties, provides a local contact point for tribes

#### TPEAC Tribal Liaisons

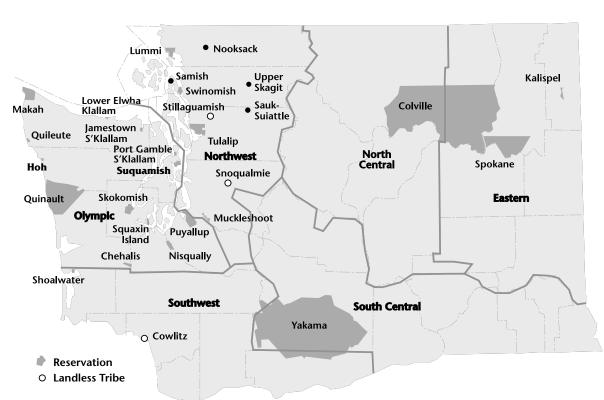
WSDOT funds a position for one representative from the Northwest Indian Fisheries Commission, Upper Columbia United Tribes, and Columbia River Intertribal Fish Commission to keep tribes informed and engaged in the Transportation Permit Efficiency and Accountability Committee (TPEAC).

#### Governor's Office of Indian Affairs www.goia.wa.gov

For a copy of the tribal directory and information on treaties.

#### **Next Steps**

- Get feedback from tribal and state transportation representatives on our current consultation process.
- Discuss needed changes
- Articulate changes in WSDOT procedures and updated Centennial Accord Plan



### Why Consultation?

#### March 2005

#### **Treaty Rights**

Between 1854-1856, seven separate treaties were negotiated with tribes throughout Washington. Tribes reserved a number of rights, including the right to fish in their Usual and Accustomed Areas. These treaties are protected as the "supreme law of the land" in Art. VI Sec. II of the US Constitution and have been further affirmed and clarified by judicial review and legislative action.

#### **WSDOT Executive Order, 1025.00**

- Establishes WSDOT's commitment to government-to-government consultation with tribes.
- Consultation means "respectful, effective communication in a cooperative process that works towards a consensus, before a decision is made or action is taken."

#### National Environmental Policy Act (NEPA)

- NEPA and its implementing regulations require federal agencies to integrate environmental considerations into their decision-making.
- Tribes can be involved in three capacities under NEPA: as a cooperating agency (agency with jurisdiction or expertise), consulting party or affected community.

#### **Centennial Accord**

- 1989 agreement between the State of Washington and Tribes committing to government-to-government relationships.
- The WSDOT Centennial Accord Plan describes how each of the departments and offices work with the tribes.

## National Historic Preservation Act (Sec. 101 & 106)

- Section 106 requires Federal agencies to take into account the effects of their undertakings on historic properties and consult with any affected tribal governments.
- "Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic

property. Such Indian Tribe or Native Hawaiian Organization shall be a consulting party".

- WSDOT consults with non-federally recognized tribes as "additional consulting parties" per 36 CFR 800.2(c)(5).
- WSDOT has an agreement to conduct NHPA compliance on behalf of FHWA.

#### **Centennial Accord**

• 1989 agreement between the State of Washington and Tribes committing to government-to-government relationships

#### We're Building Capability Together

- Programmatic Agreements with 7 Tribal Historic Preservation Offices (Makah, Skokomish, Squaxin Island, Lummi, Colville, Spokane and Umatilla).
- Quarterly meetings of Tribal Cultural Resource Managers (beginning March 05).
- Service contracts to utilize tribal expertise for natural and cultural resources.
- 3 Transportation Permitting Efficiency and Accountability Committee (TPEAC) Tribal Liaisons from Columbia River Intertribal Fish Commission, Northwest Indian Fisheries Commission and Upper Columbia United Tribes, to share information with tribes.
- Strengthening WSDOT's cultural resources office with technical expertise.

#### Why this document?

"Consultation is more than just a hurdle to overcome on a project"

-Washington State Senator Dan Swecker

"Section 101 & 106 is a process and tribal consultation is about relationships and communication for project delivery"

- Colleen Jollie, WSDOT Tribal Liaison
- Each tribe, WSDOT region and project is unique; Because of the myriad of consultation requirements and opportunities, we've created this document to share some great consultation examples. For specific consultation requirements, please refer to the regulations and WSDOT Environmental Procedures Manual.



### Transportation Planning 1

· The WSDOT Urban Planning Office (UPO) is working with the Muckleshoot Tribe on the SR 164 Route Development Plan. The tribe is serving as a "Partner" in the Corridor Working Group. UPO is working with the planning, economic development offices and the cultural resource office.

"When you are doing a route development plan, you want to hear from as many people in the community as possible, early on, so that you can incorporate their concerns into the route development process. The tribe has so many plans within the next 20 years that it can only help the system to incorporate their issues and aid their economic development. Safety and congestion is a concern of each party." Seth Stark, WSDOT Urban Planning Office.

"It's working out well, they have involved us from the very start. They also engaged our cultural resources archaeologist to identify any "fatal flaws" with bypass options. While we might not have any specific information at this stage, it's important to have the opportunity to get involved early in the process." Steve Taylor, Director Muckleshoot Planning Office

WSDOT Olympic Region Planning Office worked with the Port Gamble S'Klallam and Suguamish Tribes on the SR 3 Route Development Plan (Poulsbo north to Hood Canal Bridge). Their collaboration focused on natural resources and the Suguamish served as a partner on the Steering committee.

"Given our limited resources, its hard to put a lot of energy to review a project a project that might not go anywhere, but it's great that WSDOT is trying to include us early in the process. " Ted Labbe, Port Gamble S'Klallam Tribe

### **Project Scoping and Programming 2**

#### **Definition Phase**

- · Olympic Region is working with the Makah and Lower Elwha Klallam Tribes on a reach analysis for the Pysht River to develop a long-term design solution for repetitive maintenance sites.
- "This worked well because the tribes wrote a very succinct letter describing the repetitive nature of the sites being studied. They demonstrated that these sites met the criteria. This also worked well because our maintenance guys in that region had done the leg work to build a good working relationship with those tribes." Jim Park, WSDOT Hydrologist.
- · During the budget phase, WSF project managers consider the mitigation cost for impacts to treaty protected fishing rights.

### Design and Environmental Review 3

### Design Phase: IDT, Scoping (A)

· The Yakama Nation served on an advisory group for the SR 24 Bridge Replacement and interchange I-82 to Keyes Rd.

#### Gather Data: Discipline Reports (B)



· South Central Region has a Services Contract with Yakama Nation to conduct cultural resources surveys and environmental studies for any WSDOT projects on the Reservation.

"In the early 1990's before this agreement our on-call consultants were relying on the tribes heavily for their report information, but the tribe didn't trust WSDOT's on-call consultants. In 1998, we renegotiated the agreement to include all of environmental studies. We are contracting them because of their expertise. The experience is generally a good one, any kinks are being worked out." Gary Beeman, SWR Environmental Manager

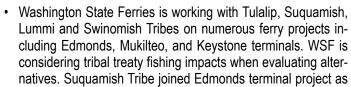
 The Northwest Region worked with FHWA, the Sauk-Suiattle, Snoqualmie, Stillaguamish and Tulalip Tribes on a SR 9 Granite Falls, Snohomish County Project. Entered into an MOA for geotechnical drilling that will impact a National Register eligible cultural resources site.

"We felt the project team kept us on top of the process, even under the circumstances of not having a lot of staff to participate. They worked with all of our representatives and answered all our questions and concerns. It worked out well." Shawn Yanity, Chairman Stillaguamish Tribe

· On the Valley Chaple Road Bridge Project, Eastern Region Local Programs worked closely with Spokane County and the Spokane Tribe to develop an MOA that outlines mitigation measures for two archaeological sites such as: data recovery. the potential handling of human remains, and public education and information sharing.

#### Develop/Evaluate Alternatives (c)

a cooperating agency under NEPA



"There are three main advantages for the tribe to be a cooperating agency. 1) Most of the other tribes allowed us to act as a "lead" for consultation. 2) The tribe had concurrence authority on mitigation. 3) It was essential is getting this project through the Signatory Agency Committee process". Tom Ostrom, Biologist for Suguamish Tribe

"Once we finally sat down at the table together we came up with a better design" Stephan Clifton, City of Edmonds Planner referring to tribal consultation on the Edmonds Ferry Terminal project

#### **Select Preferred Alternative & Prepare Design** Report (D)

 WSDOT Olympic Region is working extensively with the Puyallup Tribe on the SR 167 Tier II Environmental Impact Statement. The Puyallup Tribe is serving on the Partners Committee and reviewing discipline reports, for both natural and cultural resources.

### **Environmental Permitting, Plans, Specifications, and Estimates Phase**

#### Prepare Preliminary PS&E Mitigation (E)



 For the Toppenish Creek Bridge Project, South Central Region worked with the Yakama Nation to locate concrete box culverts to restore historic flood channels.

"WSDOT worked well with the tribe on the Toppenish Creek Bridge project. Simply put, there was a lot of back-and-forth on ideas for mitigation and the regions agreed with our box culvert idea, and asked our advice on where to put them. It worked out good for both parties" Tom Ring, Yakama Nation Hydrologist.

### Permitting (F)

 A few tribes, like the Yakama Nation issue a Tribal Hydraulic Permit Application (HPA).

### Construction 5

• WSDOT Eastern Region has established verbal agreements with the Colville and Spokane Tribal Historic Preservation Offices (THPO) for cultural resources monitoring during construction.

### Maintenance 6

- Olympic Region Maintenance Superintendent Don Clotfelter worked with the tribes in the creation of a roadside vegetation management plan to be considerate of tribal cultural and natural resource concerns.
- The WSDOT North Central Region, Colville Confederated Tribes and Bureau of Indian Affairs signed an MOU to have Colville Timber Resources clear hazard trees in the WSDOT right-of-way on reservation trust land.

"The tribal community is like any other small town or city along our highway, they have the same wants and needs. My outreach was keeping the local tribes informed about WSDOT maintenance and operations about the projects. It involved taking the time to drive out and visit with them, helping in their local needs." Don Clotfelter



Primarily for EIS projects